

**OPINION
47-104**

March 21, 1947 (OPINION)

EDUCATION

RE: County Superintendent - Salary

Your letter of March 20, 1947, has been received in which you ask for an opinion as to whether there is a conflict between Senate Bills 119 and 136 relative to the salary of county superintendents.

Senate Bill 119 was passed as an emergency measure and approved February 27, 1947, at 4:00 p.m., by the governor. It is a bill providing for an increase in the salaries of all county officers including the county superintendent, for the years 1947, 1948, 1949 and 1950.

The salaries of the several officers are based upon a graduated scale based on population of the counties. Subdivision E provides that in counties having a population in excess of 8,000 the sum of \$2,400.00 plus additional compensation of \$40.00 per year for each 1,000 additional population or major fraction thereof. Subdivision F provides that in no case shall the maximum of such compensation exceed the sum of \$2,800.00 in counties having a population of 30,000 or less and in no case shall the maximum of such compensation exceed the sum of \$3,200.00 in counties having a population exceeding 30,000 based on the United States government census of 1940.

Senate Bill 136 provides for the increase of salaries of county superintendents of schools for the years 1947, 1948, 1949, and 1950, and repeals all acts and parts of acts in conflict therewith.

Subsection (e) of section 1 thereof, provides that in counties having a population in excess of 8,000 the salary of the county superintendent shall be \$2,600.00, plus additional compensation of \$40.00 per year for each 1,000 additional population or major fraction thereof, but in no case shall the maximum of such compensation exceed the sum of \$3,200.00.

It will be observed that the maximum that may be paid under the provisions of each of these two bills is \$3,200.00, but under Senate Bill 119, the maximum can be paid only in case the population of the county exceeds 30,000, while under Senate Bill 136, the maximum can be paid only in case the population of the county is in excess of 8,000 in which case the salary of the county superintendent is \$2,600.00 plus an additional compensation of \$40.00 per year for each 1,000 additional population or a major fraction thereof but in no event in excess of \$3,200.00.

As has been pointed out, both bills were passed as emergency measures. Where two statutes are passed at the same legislative assembly, ordinarily they are contemporary statutes and must be harmonized if possible. If they cannot be harmonized, then the one that was last approved must prevail.

Senate Bill 136 was approved sixteen days later than Senate Bill 119. Therefore, if there is an irreconcilable conflict between the two Senate bills, Senate Bill 136 must prevail. There is an irreconcilable conflict between these two insofar as the same apply to the salary of the county superintendent of Burleigh County. From the official federal government census of 1940, it appears that the population of Burleigh County was 22,736. Under Senate Bill 136, the county superintendent of Burleigh County would be entitled to \$2,600.00 plus additional compensation of \$40.00 per year for each 1,000 additional population or major fraction thereof, but not in excess of \$3,200.00.

Since the population of Burleigh County is 22,736, the excess over \$8,000 would be 16,736 which at the rate of \$40.00 per year for each additional 1,000 would be \$640.00. This added to \$2,600.00 would make \$3,240.00, but since the maximum is \$3,200.00, the last \$40.00 could not be counted, and therefore the salary of the county superintendent of Burleigh County would be \$3,200.00.

Since Senate Bill 136 is the last approved, it would repeal Senate Bill 119 insofar as the latter is in conflict with it, and it would follow that the salaries of county superintendents of the state are governed by the provisions of Senate Bill 136. Since it carries an emergency measure, it became effective upon its approval by the governor.

NELS G. JOHNSON

Attorney General